



## **“Terrafix Standard Terms & Conditions”**

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## **Terrafix Standard Terms & Conditions of Sale (UK)**

### **1. Definitions**

These Terms and Conditions apply between us, TERRAFIX LIMITED (“Terrafix”) and you the Customer, being the person, firm or company to whom this document has been provided. In these terms and conditions:- “the Equipment” means the goods agreed to be supplied by us to you as specified in our quotation to you, and “Equipment” may include services where applicable:- “the Contract” means the agreement between ourselves and you for the supply of Equipment, incorporating these terms and conditions:

### **2. Contract Procedure**

2.1 Every order is subject to these terms and conditions of sale, which may not be modified without our prior agreement in writing, and these terms and conditions shall replace any other conditions which may be submitted by you at any time. We reserve the right to reject any order received from you.

2.2 You must accompany the order with sufficient information, including, as appropriate the frequency of equipment on which you will be licensed to operate, national GSM bearers which you wish the equipment to be compatible with, and any necessary engineering or other instructions to proceed with the contract immediately.

2.3 You acknowledge that you have not relied on any representations in entering into the Contract other than those in our written quotation. None of Terrafix’s employees or agents has the authority to vary these terms and conditions orally or to make representations about the condition of the equipment, its fitness for purpose or any other matter.

### **3. Validity**

3.1 Unless otherwise stated, our quotations are valid for 30 days only from date of quotation.

### **4. Prices**

4.1 Prices quoted and / or agreed with you are based in part on the quantities of Equipment ordered. We reserve the right to vary the price if you fail to take delivery of such quantities within the agreed delivery period, or if no period is agreed, within a reasonable time.

4.2 The price for the Equipment shall be the quoted price, or where no price has been quoted, or where the quoted price is no longer valid, our standard price as at the date of acceptance of the order.

4.3 If the delivery lead time for one or any number of items of Equipment is more than three months, we reserve the right to vary the price relating to such items to take account of variations of cost beyond our control (including, by way of example only, but not by way of limitation, cost of materials, labour, transport and fuel).

We reserve the right in every case to vary the price to take account of variations in any tax, duty or charge imposed by any Government or any other authority taking effect between acceptance of order and delivery. Unless such items are specifically included within our quotation, charges for delivery, installation and commissioning of the Equipment will be made.

4.4 Unless stated otherwise, all prices are exclusive of VAT, which shall be payable by you at the time of payment.

4.5 Where quoted prices include terms for the hire or maintenance of the Equipment, or any part of the Equipment, or the provision of any hosting services, such terms are included for information only. If the facilities you may negotiate a separate contract with us.

## **5. Payment Terms**

5.1 All invoices for the Equipment or any other equipment or charges must be paid within 30 days of the date of the invoice provided that invoices due on signing of order or despatch of Equipment must be paid immediately. In the event of default in payment by the due date, we reserve the right to charge compound interest at the rate of 1.5% per month on sums due but unpaid from the due date to the actual date of payment.

5.2 We reserve the right to suspend any deliveries of Equipment to you whether pursuant to this Contract or any other contract and cancel this or any other orders received from you where any payment due by you is not received by us in due time.

5.3 Where you fail to pay any account by the due date or we have good reason to believe that future accounts will not be paid by their respective due dates, we shall have the right to withdraw credit facilities from you and require that payment be made immediately, in full, in respect of current orders and on the signing of any future orders.

## **6. Illustrations and Leaflets**

6.1 No descriptions and illustrations in leaflets and catalogues or other pricing, publicity or advertising materials shall form any part of the Contract and where forwarded are intended to illustrate the type and general specification of the Equipment only.

## **7. Variations and Cancellation**

7.1 The Equipment is part of our proprietary range and we reserve the right to make any amendments in matters of detail if an improvement in facilities or performance may be achieved by the amendment or to supply equipment of equivalent performance if the Equipment is no longer available.

7.2 No cancellation of any order for Equipment shall be accepted unless we accept that cancellation and any outstanding remittance paid to us.

7.2.1 The sales value of any Equipment we may have provided to you or may provide to you having acquired or manufactured it for you and the value of any services performed; and

7.2.2 and any other costs and liabilities which we incur by reason of your cancellation.

The minimum cancellation charge will be ten percent (10%) of the value of the cancelled order.

7.3 If at any time after we have received your order you wish to make any modifications or additions to that order, you shall be only permitted to do so after obtaining our written consent and after we have agreed to any variation in price and / or any revision to delivery, installation or commissioning dates.

7.4 Any extra cost or liability incurred by us due to suspension of manufacture or rescheduling of deliveries arising out of or resulting from your instructions or lack of or mistaken instructions or due to any interruptions or delays attributable to you shall be added to the price of the Equipment.

## **8. Warranty**

8.1 Subject to the conditions listed below we warrant that the Equipment will be free from defects in design material and workmanship for a period of 12 months, from the date of delivery to you. Any such defects notified to us within 12 month of delivery will be repaired or replaced (at our option).

8.2 The above warranty is subject to the following conditions:-

8.2.1 We shall be under no liability in respect to any defect in the Equipment arising from any drawing, design or specification supplied by you.

8.2.2 We shall be under no liability in respect of any defect arising from fair wear and tear, improper use, wilful damage, negligence, abnormal working conditions, failure to follow our instructions (whether oral or in writing) misuse, or alteration or repair of our Equipment without our approval:

8.2.3 The above warranty does not extend to materials, parts or equipment not manufactured by ourselves, in respect of which you shall only be entitled to the benefit of any such warranty or guarantee as it is given to the manufacturer to us.

8.2.4 We will repair or replace Equipment under this warranty provided we receive notification of the defect within 5 days of the occurrence of any fault and you return the Equipment at your risk and expense immediately upon receiving our request to do so.

8.3 All repairs and replacements carried out under this warranty shall be subject to the same warranty until the later of:-

8.3.1 Expiry of the original 12 month warranty.

8.3.2 three months after the return of the repaired or replacement product.

8.4 Subject as expressly provided in these conditions and except where the equipment is sold to a person dealing with a consumer (with the meaning of the unfair contract terms act 1977) all warranties, conditions, representations or other term implied by statute or common law are excluded to the fullest extent permitted at law.

8.5 Any equipment which is returned to us for repair or replacement will be returned to you within 21 working days carriage paid, however if the Equipment is found not to be faulty all costs for the repair activity and carriage will be charged to you.

## **9. Licences**

9.1 The use of radio transmitting and receiving devices are subject to the issue by Ofcom, licences to operate on frequencies allocated by Ofcom and used in the manner described in the relevant licence. Unless otherwise agreed in writing by us it shall be your responsibility to see that the equipment is used within the terms of the appropriate licence. Where we undertake to assist with the obtaining of such a licence, we reserve the right to charge you for all work undertaken and all cost incurred by us in obtaining such licences. You undertake not to use the Equipment otherwise than in accordance with such licence and to indemnify us against costs, actions or damage arising from use of the Equipment except as laid down in the licence.

## **10. Public Telecommunication Network Connections**

10.1 You must apply for and receive consent of the network operators prior to connecting any equipment to the network(s). The reimbursement of any charges from the network operators will be your responsibility.

## **11. Inspection and Testing**

11.1 All Equipment supplied by us is subject to standard factory tests. Tests other than those tests must be agreed separately in writing with us, and the costs of additional tests may be added to the Equipment price.

11.2 If you require any tests to be made in your presence or in the presence of your representatives, we will on request advise you not less than 14 days before the tests are due to take place. Should you or your representatives fail to attend at that time and place the tests will be deemed to have taken place in your presence.

## **12. Installation**

12.1 Where you require installation and commissioning of the Equipment, charges are based on an uninterrupted programme of work in accordance with the installation and commissioning dates referred to in our quotation. Any delays which occur as a result of inclement weather, non-completion of works by third parties, non-availability of suitable power supplies, or other works or services to be supplied by a third party, acts or omissions on the part of you, or any other cause beyond our control may be the subject of separate charges.

12.2 Where Equipment is to be installed in vehicles, you must provide us with the type and registration number of each vehicle and all other information we may reasonably require. You shall make the vehicles available at the address and at the date and time as we shall reasonably request. We shall not be liable for any loss or damage to any vehicle unless caused solely by our negligence or that of our servants or agents.

## **13. Delivery Period**

13.1 Any delivery date quoted in respect of your order is our best estimate given in good faith and is subject to you providing us with all the necessary order and shipping information, any engineering or other instructions we may require in due time. We will not be obliged to begin work on your order until such information is received and at that time we may give you a revised estimate of the delivery dates. Whilst we will use all reasonable endeavours the Equipment by such date, we cannot accept any liability which may arise out of any delayed delivery by that date.

13.2 We shall not be required to provide any proof of delivery:-

13.2.1 in respect of Equipment, more than six months after the date of despatch to you, and,

13.2.2 in respect of spares, more than 10 days after the date of despatch to you.

13.3 Equipment shall be deemed to be accepted on delivery unless it is properly rejected in accordance with clause 13.4.

13.4 You shall be entitled to reject any Equipment not in conformance with the Contract within 7 days of delivery. Where inspection is delayed you shall inform us forthwith advising that inspection shall be carried out within a reasonable time within 14 days of delivery. Equipment rejected in accordance with this clause shall be returned to us at your risk and expense together with your reasons for rejection.

## **14. Retention of Title and Risk**

14.1 Property in the Equipment shall not pass to you until we have received the full price for the Equipment. Risk in the Equipment will pass to you on delivery. Until the transfer of the property in the Equipment to you, you shall hold the same as a bailee, in the event of non-payment in full by the due date for this Equipment or for any other equipment or services we provide to you, or of any act of bankruptcy, or in the case of a company, liquidation or the appointment of a receiver or administrator, we shall be entitled to enter any of your premises or vehicles and disconnect and remove any or all of the Equipment during normal business hours. Nothing in this condition shall confer any right on you to return or procure the return of the Equipment to us, nor create any agency between ourselves and you.

14.2 In no circumstance shall we be liable to you for loss or damage to the Equipment however caused, after the delivery to you.

## **15. Termination**

15.1 Without prejudice to any rights accrued in our favour in respect of any breach by you of this Contract, we shall not be obliged to continue manufacturing or delivery, of any of the Equipment if and so long as

15.1.1 you are in default in making any payment due to us or commit any breach of your other obligations under this Contract or

15.1.2 you for any of your parent or subsidiary companies, or subsidiaries of parent companies as defined in S 736 Companies Act 1995 is adjudicated bankrupt or commits any act of bankruptcy or makes any composition or arrangement with its creditors or (being a company) enters into liquidation (not being a voluntary liquidation for the purpose of reconstruction or amalgamation) or has a receiver or administrator of its assets appointed or suffers any similar action in any jurisdiction in consequence of debt.

## **16. Liability**

16.1 We shall indemnify you without limit against injury to any person (including death) to the extent that such injury is caused by or is a result of our negligence or that of our servants or caused by defective material or workmanship in respect of the Equipment.

16.2 We shall indemnify you for damage to tangible property arising by reason of, or in connection with, our negligent performance of the Contract provided that our liability shall be limited to £1 million.

16.3 Our entire liability under in connection with the supply of the Equipment in respect of any claim or series of claims shall not exceed the price of the items of Equipment which forms the subject matter of the claim.

16.4 We shall not be liable to you for any increased costs, indirect, special or consequential loss or damage (whether for loss of profit or otherwise).

16.5 Each provision of this clause is to be construed as a separate limitation applying and surviving even if for any reason any other provision is held to be inapplicable or unreasonable in any circumstances and all valid provisions shall remain in force after termination of this contract.

## **17. Force Majeure**

17.1 We shall be relieved from liability under this contract if and to the extent that we are hindered or prevented from carrying out all or any of our obligations under the Contract owing to any cause beyond our control, such as, by the way of example only and not by way of limitation, acts of god, wars, strikes, lockouts, governmental controls or restrictions, non-availability of any equipment.

## **18. Storage and Delayed Delivery**

18.1 If we are required to hold Equipment after the date of delivery the price will become due in 30 days from the date on which the Equipment was available for despatch. We reserve the right to make a storage charge for the period of storage, which shall be deemed to commence on the date on which the Equipment was available for delivery.

## **19. Packing Damage and Loss in Transit**

19.1 All Equipment despatched to you will be packed in our standard cartons which are not suitable for storage. Claims for items damaged in transit must be received in writing by the Carrier and ourselves within three days of delivery in the case of partial loss or damage and within five days of receipt of our notice for complete loss in transit.

## **20. Software and Firmware**

20.1 Software and Firmware provided by us shall remain our property or that of our licensors and you recognise the confidential nature of the rights owned by us. You are granted a personal non-exclusive, non-transferable limited right of use of such software in machine readable form for any direct connection with the Equipment for which it was supplied only. In certain circumstances you may be required to enter into a separate licence agreement and pay the standard licence fee for that software.

20.2 You undertake not to disclose any part of the software or firmware to third parties without our written consent, nor to copy or modify the software or firmware. We may, at our discretion carry out minor modifications to software. Major modifications may be undertaken by us at your request, which will be subject of a separate agreement and will be charged separately.

20.3 All Software is warranted against defects in media for a period of 3 months from delivery. Within this period we will correct errors or defects or, at our option, arrange a free of charge replacement provided that you return the software on a free of charge post return basis.



20.4 Other than as in sub-clause 20.3 above we make no representation or warranties expressly implied such by way of example but not of limitation regarding merchantability or fitness for any particular purpose or that the software is error free.

## **21. Patents Registered Designs and Trade Marks**

21.1 We give no warranty, nor shall any be implied by any provision of this agreement, that the Equipment does not or will not constitute an infringement of any patent or other right. However, provided that you notify us immediately of any claim, we undertake to indemnify you fully against all legal costs (including the costs of any settlement) incurred by you and any damages awarded against you by any competent court as a result of any proceedings instituted against you in respect of any patent or other infringement or rights arising out of the use of the Equipment. This indemnity shall be subject to the following limitations:-

21.1.1 the indemnity shall apply only to alleged or actual infringements of patents or rights occasioned by the use of the Equipment in the form it was supplied by us.

21.1.2 the indemnity shall not apply in respect of use of the Equipment in conjunction with other equipment or software not supplied by us for the purpose and:-

21.1.3 this indemnity shall be subject always to our absolute right to control all acts and deeds done by you pursuant to a claim and notwithstanding the generality of the foregoing to appoint on your behalf legal advisors to defend such proceedings as we in our absolute discretion, shall think fit, including, by way of example and not by way of limitation, the negotiation of any settlement in relation to any such proceedings and:-

21.1.4 we shall not be in any way accountable to you for any costs, expenses or damage whatsoever whether direct or consequential incurred or suffered by you as a result of any infringement alleged or actual arising out of the use of the Equipment.

21.1.5 in the event of our not being reasonably able to modify, substitute or otherwise procure you the right to continue using the infringing Equipment we may, with your consent, remove such Equipment. However, if you refuse to give that consent after we have made such a request, we shall have no liability in respect of your continued use of the infringing Equipment.

## **22. EMC Regulations**

22.1 We confirm that the Equipment is compliant with the provisions of the 1992 Electromagnetic Compatibility Regulations. However you should be aware that any amendments or additions to the Equipment, or any reconfiguration of the Equipment, or any change in environment where the Equipment operates, whether man-made or otherwise may affect the electromagnetic compatibility of the Equipment. We can assume no liability or responsibility for its electromagnetic capability which may arise from or be affected by any change or amendment or addition to the Equipment itself or to its surrounding environmental conditions.

## **23. Propagation Studies**

23.1 We may as part of the supply of the Equipment to you, have prepared coverage studies of the likely radio coverage. The coverage predicted is a guide only. It is based on the local area information and your stated requirement. However changes to the local environment, such by way of example only, vegetation growth or new construction may adversely affect radio coverage. If on commissioning of the Equipment or subsequently, coverage is significantly reduced, we will, at extra charge, perform additional radio surveys to determine the cause of the reduced coverage. If these surveys show that is primarily caused by the Equipment, then the cost of those surveys will be refunded to you.

## **24. English Law**

24.1 This Contract shall be governed by and interpreted in accordance with English Law and subject to the jurisdiction of the English Courts.

## **25. Notices**

25.1 Any notice purported to be given under the Contract to you shall be deemed to have been duly served and have been received by you in due course of post, if sent by us by pre-paid letter post addressed to you at you last known address.

## **26. Headings**

26.1 The Headings do not form part of these Terms and Conditions and shall not be taken into account in their interpretation.

## **27. Export Control**

27.1 You undertake to comply with and not to do anything which would render us in contravention of the Export Administrations Regulations of the US Department of Commerce for the time being in force.

## **28. Waiver**

28.1 No admission, act or omission made by us shall during the continuance of this Contract or thereafter constitute a waiver or release of you from any liability incurred under the Contract.

## **29. Whole Contract**

29.1 This agreement supersedes and invalidates all other commitments, representations and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior to the date hereof, and which shall become null and void from the date this agreement is signed.

**30. Severability**

30.1 If any provision of this agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected by that invalidity or unenforceability.

**31. Arbitration**

31.1 Any disputes of a technical nature only in connection with the Contract shall be subject to the arbitration of an arbitrator agreed between the parties or failing agreement appointed by application to the President of the Institute of Electrical Engineers.

**END OF DOCUMENT**